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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: James R. Melin

OBJECTOR: Trout Unlimited

CASE 43B-0148-R-2020

43B 194537-00

43B 194539-00

43B 194540-00

43B 194541-00

43B 194542-00

43B 194543-00

ORDER ON MOTION FOR SUMMARY JUDGMENT

Objector Trout Unlimited (“TU”) filed a motion for summary judgment seeking an order limiting the period of use for water right claims 43B 194542-00 and 43B 194543-00 to May 1 to July 15 each year. TU bases its motion on a decree issued by a state district court in *Gerald F. Petrich, et al. v. Archibald and Margaret E. Allen, et al.*, Cause No. 11616 (Mont. Sixth Jud. Dist., Park County, July 22, 1964) (“*Petrich Decree*”). Claimant James R. Melin (“Melin”) opposes the motion.

UNDISPUTED FACTS

1. Mill Creek flows generally westerly out of the Absaroka Mountains to its confluence with the Yellowstone River near Pray, in Park County, Montana.
2. The Water Court included claims 43B 194542-00 and 43B 194543-00 in the Preliminary Decree for the Yellowstone River Basin Above and Including Bridger

Creek (Basin 43B). Claims 43B 194542-00 and 43B 194543-00 are based on statements of claim Robert L. Melin and Wanda M. Melin filed in 1982.

3. The Preliminary Decree describes claim 43B 194542-00 as a decreed right to use water from Mill Creek for irrigation with a June 4, 1963 priority date, and a period of use from April 1 to November 1 each year.

4. The Preliminary Decree describes claim 43B 194543-00 as a decreed right to use water from Mill Creek for irrigation with a June 3, 1963 priority date, and a period of use from April 1 to October 1 each year.

5. Melin owns water right claims 43B 194542-00 and 43B 194543-00. Melin is the son of Robert and Wanda Melin (the “Melins”). Melin is the successor in interest to the two claims.

6. The statement of claim form filed for claim 43B 194542-00 identifies the period of use as April 1 to August 1 each year. The statement of claim form for claim 43B 194543-00 identifies the period of use as April 1 to October 1 each year. (Doc. 19.00¹, Ex. B and Ex. C). Both statements of claim describe the claims as “decreed” rights.

7. In 1938, the District Court decreed water rights from Mill Creek in the case *Sallie A. Allen, et al. v. N.F. Wampler, et al.*, Cause No. 7583 (Mont. Sixth Jud. Dist., June 1, 1938) (“*Allen v. Wampler Decree*”). (Doc. 19.00, Ex. F).

8. In 1964, the District Court issued a supplemental decree as to water rights from Mill Creek in the *Petrich Decree*. (Doc. 19.00, Ex. A).

9. The *Petrich Decree* was an action filed by three sets of plaintiffs pursuant to now-repealed § 89-829, R.C.M. The plaintiffs sought water rights from Mill Creek exceeding what the District Court previously decreed in the *Allen v. Wampler Decree*. The plaintiffs sought the supplemental water rights to divert water to a new ditch. The Melins were one set of the plaintiffs.

¹ Docket entry 19.00 is the set of exhibits TU filed in support of its motion, together with foundational affidavits. The docket number refers to the document sequence in the Court’s electronic case file system.

10. The complaint named as defendants other persons with water rights on Mill Creek. (Doc. 19.00, Ex. G). Several defendants answered and cross-claimed or counterclaimed for supplemental decreed rights of their own. The defendants sought supplemental water rights to divert additional water to several existing ditches.

11. Following a trial, the District Court made several findings of fact, including the following:

That the Court finds that during the months of May and June and until approximately the 15th day of July of the normal irrigating season there is flowing in Mill Creek at the headgate of the Mill Creek Flat Ditch approximately 10,000 miners' inches of water in excess of the total quantity of water heretofore adjudicated and decreed by this Court in the aforesaid action.

(Petrich Decree, Finding of Fact, ¶ II).

12. Based upon this and other findings of fact, the District Court also made conclusions of law, including the following:

The Court concludes, as a matter of law, that each of the parties to this action are the owners of and entitled to the possession of their respective lands as described in their complaints and cross complaints filed herein and in these Findings of Fact; and that each of the parties to this action are owners of the right to the use of that quantity of the waters of Mill Creek and its tributaries in addition to their previous decreed rights, hereinabove set forth in said findings of fact ***.

(Petrich Decree, Conclusions of Law, ¶ II).

13. Ultimately the District Court decreed water rights to both the plaintiffs and defendants. The District Court decreed to the three sets of plaintiffs, including the Melins, water rights with both June 3, 1963 and June 4, 1963 priority dates. The District Court decreed to the defendants water rights with a June 4, 1963 priority date. *(Petrich Decree, Conclusions of Law, ¶ III).*

14. Claim 43B 194543-00 is based on the June 3, 1963 right decreed by the District Court. Claim 43B 194542-00 is based on the June 4, 1963 decreed right.

15. Additional facts are discussed below as necessary.

ISSUE

Should the Court limit the period of use of claims 43B 194542-00 and 43B 194543-00 to May 1 to July 15 each year?

DISCUSSION

A. Summary Judgment Standard.

Summary judgment is proper when “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” M. R. Civ. P. 56(c)(3). A material fact involves the elements of the cause of action or defense at issue to such an extent that it requires resolution of the issue by a trier of fact. *Williams v. Plum Creek Timber Co.*, 2011 MT 271, ¶ 14, 362 Mont. 368, 264 P.3d 1090. In determining whether a material fact exists, the court views the evidence in the light most favorable to the non-moving party. *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶ 38, 345 Mont. 12, 192 P.3d 186. “All reasonable inferences that may be drawn from the evidence must be drawn in favor of the party opposing summary judgment.” *Id.*

Where the moving party demonstrates there is no genuine issue as to any material fact, the burden shifts to the party opposing the motion to establish an issue of material fact. *Lee v. USAA Cas. Ins. Co.*, 2001 MT 59, ¶ 26, 304 Mont. 356, 362, 22 P.3d 631, 636. Ultimately the question of whether the moving party is entitled to summary judgment under the undisputed facts is a question of law. *Thornton v. Flathead County*, 2009 MT 367, ¶ 14, 353 Mont. 252, 255, 220 P.3d 395, 399.

B. Application

TU does not contend the Melins failed to properly file statements of claim for claims 43B 194542-00 and 43B 194543-00. TU also does not dispute the statements of claim are prima facie proof of their contents. Section 85-2-227, MCA. As an objector TU must prove “that the elements of the claim[s] do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973.” Rule 19, W.R.Adj.R. TU may meet this burden by producing evidence “that overcomes one or more elements of the prima facie statement of claim.” *In re Burkhartsmeier*, 1997 Mont. Water LEXIS 1, *17.

TU directs its motion at only the period of use and period of diversion elements of the two claims. TU argues it meets its burden to overcome the prima facie status of these elements as a matter of law because the Melins filed these claims as “decreed” rights, and the dates specified in the *Petrich Decree* are more limited than the periods of use and diversion in the Preliminary Decree.

The Water Use Act requires the Water Court to describe several specific elements of each state-based existing water right² included in a final decree. Section 85-2-234(6), MCA.³ The required elements comprise what the Water Use Act requires the Water Court to define as the constitutionally protected limits of existing water rights. Section 85-2-234, MCA; *McDonald v. State*, 220 Mont. 519, 536, 722 P.2d 598, 608 (1986); Mont. Const. art. IX, § 3(1). One set of elements the Water Court must adjudicate is “the inclusive dates during which the water is used each year.” Section 85-2-234(6)(h), MCA. These dates are the period of diversion and period of use of a water right. Adjudicating period of diversion and period of use is important to water administration because it defines when water diversions and use under a water right may begin and must end, and when a water user may call for water each year. Any water use outside or beyond the periods the Court adjudicates is not part of an existing water right.

Period of diversion describes the time period when water may be diverted from the source of supply each year. Rule 2(a)(50), W.R.C.E.R. Period of use describes the earliest and the latest dates water may be used during each year. Rule 2(a)(51), W.R.C.E.R. Because the periods of diversion and use are the same for the two claims, they will be referred to collectively as the “period of use” in this Order.⁴

² An “existing water right” is “a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.” Section 85-2-102(13), MCA.

³ The Act also includes a general element authorizing the Water Court to decree “any other information necessary to fully define the nature and extent of the right.” Section 85-2-234(6)(i), MCA.

⁴ Direct flow irrigation rights generally have the same period of diversion and period of use because the appropriator uses water upon diversion without first storing it. *In re Clark Fork Coal.*, 2014 Mont. Water LEXIS 15, *4.

The findings of fact in the *Petrich Decree* specify that water is available from May to mid-July in Mill Creek in excess of what the District Court previously decreed. TU is correct that the Preliminary Decree period of use dates for claims 43B 194542-00 and 43B 194543-00 do not match findings of fact in the *Petrich Decree* because the Preliminary Decree describes the claim 43B 194542-00 period of use as April 1 to November 1, and for claim 43B 194543-00 as April 1 to October 1. Because the facts found in the *Petrich Decree* are undisputed, TU argues it has met its burden to prove by a preponderance of evidence that the Preliminary Decree dates are wrong and should be modified to May 1 to July 15 to match the *Petrich Decree* dates. The Melins respond with several arguments why the Court should deny TU's motion.

1. Do disputed facts preclude summary judgment?

Melin argues TU's motion should be denied because disputed issues of material fact exist. Melin concedes the *Petrich Decree* says what it says, and Melin does not dispute the District Court only made a finding of fact that excess water was available from May through mid-July. Nonetheless Melin argues a fact issue exists as to period of use because Melin and the successors to other *Petrich Decree* parties claim rights with periods of use and diversion extending beyond May 1 to July 15. (Doc. 22.00, at 7-8). Melin contends these filings and the absence of objectors other than TU creates a fact issue as to how the decree has been interpreted and applied over time. (Doc. 22.00, at 5). Melin also suggests the inclusion of the dates in the findings of fact section of the *Petrich Decree* rather than the in the conclusions of law means the District Court did not decree a period of use, leaving it unresolved. (*e.g.*, Doc. 22.00, at 2, 3-4, 15).

Melin's fact dispute argument overlooks what it means to claim a "decreed" right. The Water Use Act requires a statement of claim to include "evidence in support of the claim." Section 85-2-224(2), MCA. The statement of claim form incorporates this requirement by requiring claimants to identify the "type" of right on a claim form. The "type" of right states "the historical basis of an existing water right." Rule 2(a)(70), W.R.C.E.R. (defining "Type of Historical Right"). While describing the type of existing right does not matter for purposes of administering water or describing the elements of a

water right in a final decree, it does matter for purposes of determining the validity of the right. *In re Danreuther Ranches*, 2013 Mont. Water LEXIS 5, *2 (“[t]he Water Court does not distinguish between use rights, filed rights, or decreed rights when it issues final decrees”).

The Court recognizes several types of claims in the adjudication, including claimed decreed rights, filed rights, use rights, and reserved rights. A decreed right is “a claimed water right determined in a judicial decree prior to the commencement of this adjudication or after commencement of this adjudication.” Rule 2(a)(18), W.R.C.E.R.⁵ When a claimant claims a decreed right, the Court determines what the district court decreed by examining the language and context of the prior decree.

The District Court issued the two Mill Creek decrees pursuant to a statute the 1921 Montana legislature passed codifying private water right adjudication proceedings. Ch. 228, Laws of 1921. The 1938 *Allen v. Wampler Decree* awarded water rights to the various parties identified in the decree. Under the framework of the 1921 statute, the *Allen v. Wampler Decree* caused Mill Creek to be an adjudicated stream.

The 1921 legislation included a process to appropriate additional water on a previously adjudicated stream. Section 89-829, R.C.M. 1947 (repealed 1973). The process required filing with the clerk of district court a petition describing:

[T]he amount of water sought to be appropriated, a description by name or otherwise of the watercourse or body from which he intends to appropriate the water, and a general description of the ditch or aqueduct, stating its size, length, and capacity, showing the proposed means of appropriation and use of the water, and also the place of use thereof.

Section 89-829(1)(b), R.C.M. 1947. Following the filing of a petition, the 1921 statute required a district court to conduct a proceeding and, if the evidence warranted, to “enter an interlocutory or permanent decree allowing the appropriation sought, either in whole or in part, subject to the terms of all prior decrees.” Section 89-831, R.C.M. 1947

⁵ For adjudication purposes, the Water Court incorporates the definitions in the Water Right Claim Examination Rules, unless the context requires otherwise. Rule 2(b), W.R.Adj.R.

(repealed 1973). In *Anaconda Nat'l Bank v. Johnson*, 75 Mont. 401, 411, 244 P. 141 (1926), the Montana Supreme Court concluded this was the exclusive method to appropriate water on an adjudicated stream after the effective date of the 1921 statute.

The District Court conducted the 1964 *Petrich Decree* proceeding to supplement the *Allen v. Wampler Decree*. The plaintiffs initiated the proceeding because they wanted to build a new ditch to divert previously unadjudicated water from Mill Creek and convey it to their properties. Their complaint alleged “Mill Creek has surplus or extra water that has not been previously decreed.” (Doc. 19.00, Ex. G, ¶ 3). The various defendants answering the complaint did not dispute surplus water was available in Mill Creek. Instead, they counterclaimed and asked for additional surplus water they apparently already were diverting at various other ditches. The counterclaims mostly followed a similar format, alleging more specifically that “there has been flowing in Mill Creek during the months of May and June and generally until approximately the 15th day of July, an estimated 10,000 miner’s inches of water in excess of the total amount of water adjudicated in” the *Allen v. Wampler Decree*. (See, e.g., Ex. H, Leo Briggs Answer, ¶ IV).

In the *Petrich Decree*, the District Court addressed whether there was surplus water in Mill Creek in the context of both the plaintiffs’ complaint seeking a new use and the defendants’ counterclaims seeking expanded use from existing ditches. To determine whether surplus water was available for all the parties, the Court first made the overall fact finding that approximately 10,000 miner’s inches of surplus water was available “during the months of May and June and until approximately the 15th day of July of the normal irrigating season.” (Undisputed Facts, ¶ 8). The Court then decreed surplus water in specific amounts to the various parties.

Melin is correct that the May to July dates are not in the conclusions of law. But the conclusions of law state that the parties “are owners of the right to the use of that quantity of the waters of Mill Creek and its tributaries in addition to their previous decreed rights, *hereinabove set forth in said findings of fact.*” (Doc. 19.00, Ex. A, Concl. of Law ¶ II) (emphasis added). Courts do not make findings of fact in a vacuum. Rather,

the “purpose of findings of fact is to provide a foundation for the court’s judgment.” *In re Marriage of Johnson*, 1999 MT 254, ¶ 24, 296 Mont. 311, 989 P.2d 356. The District Court’s judgment in the *Petrich Decree* determined enough water was available to recognize and decree more water rights on Mill Creek, but only during the specific time of year described in the findings of fact. The findings of fact were necessary to provide the requisite foundation to comply with the provisions of the 1921 statute for this particular adjudicated stream. The *Petrich Decree* contains no foundational facts to recognize water rights outside the period the District Court specifically stated. Because, as *Anaconda National Bank v. Johnson* recognized, the 1921 statute was the exclusive method of obtaining additional rights on an adjudicated stream, the District Court recognized no rights outside the period expressly stated in the findings of fact.

The Melins accepted these foundational facts when they filed their claims as decreed rights, relying on the *Petrich Decree*. Melin does not contend the findings of fact in the *Petrich Decree* were erroneous in any way. Nor does Melin cite any case or provision of the 1921 statute that allows a court to ignore a specific set of foundational facts that form the basis of a district court decree. If the Melins and others contended additional water was used outside what the District Court determined was available in its decree, they could have (and apparently did⁶) file a claim for a use right to cover that use. However, there is no foundational fact in the decree cited as the evidentiary basis for the claims to support water use beyond the dates in the District Court’s finding of fact, so any use outside those facts is not part of the right the District Court decreed. As the District Court’s facts are undisputed and foundational to what the District Court decreed, the District Court only decreed water within this period. Melin’s asserted disputed facts as to water use after July do not raise a fact issue as to what was decreed. Rather, they only allege potential use of water outside the terms of the decree. If Melin intended to claim

⁶ Claim 43B 194537-00 is decreed as a use right with a May 1, 1965 priority date from the same point of diversion and covering the same place of use as claim 43B 194542-00. TU’s objection to this claim also is consolidated into this case.

such water beyond the decree, it only could do so as a use right, with the requisite evidence to support such a right.

TU notes in its reply that Melin's fact dispute argument conflates issues of fact with issues of law. The Court agrees. As TU correctly notes, interpretation of a prior district court decree is a question of law, not fact. *In re Quigley*, 2017 MT 278, ¶ 15, 389 Mont. 283, 405 P.3d 627. The unambiguous language and context of the *Petrich Decree* provide for a period of use of May 1 to July 15. TU met its burden to overcome the prima facie status of the period of use elements of the two claims with undisputed facts by referencing the same decree Melin's predecessors relied on as the evidentiary basis for the claims.

2. *Do prior Water Court orders create an issue of disputed fact?*

Next, Melin argues proceedings conducted after the issuance of the Basin 43B Temporary Preliminary Decree ("TPD") for claim 43B 194542-00 establish "prior precedent" that a May 1 to July 15 period of use "is not sacrosanct." (Doc. 22.00 at 9). This argument applies only to claim 43B 194542-00, not to claim 43B 194543-00.

Melin's argument refers to an April 22, 1994 master's report in case 43B-402 recommending the period of use for claim 43B 194542-00 be modified from April 1 to August 4, as originally claimed and as decreed in the TPD, to April 1 to November 1. (Doc. 19.00, Ex. B at 39-41). The Court adopted the recommendation on May 25, 1994. Melin argues the Water Court's prior interlocutory order on claim 43B 194542-00 "creates a genuine issue of material fact as to the period of use of Melin's claims." (Doc. 22.00, at 10).

The Water Court issued the Basin 43B TPD on January 16, 1985. TU was not a party to case 43B-402. The Water Use Act provides that when the Water Court issues a TPD prior to March 28, 1997, a person who was not a party to the prior proceeding does not waive the right to object to a subsequent preliminary decree. Section 85-2-233(1)(c), MCA.

Melin argues the 1994 Water Court order creates an issue of material fact because it was based on an affidavit filed by Melin's parents on November 27, 1989. A copy of

the affidavit is in the claim file for claim 43B 194542-00. Melin relies on paragraph 3 of the affidavit, which says:

That their [*sic*] is water available in Mill Creek for irrigation use, from extra late summer and fall moisture and when the prior appropriators fail to use all of the water rights as formerly decreed to them.

(Doc. 19.00, Ex. B, at pdf pp. 48-50⁷).

Melin cites the affidavit seeking to create an issue of fact in response to TU's position that the *Petrich Decree* contains no issues of material fact as to the decreed period of use. A "material fact" is a fact involving "the elements of the cause of action or defenses at issue to an extent that necessitates resolution of the issue by a trier of fact." *Arnold v. Yellowstone Mt. Club, LLC.*, 2004 MT 284, ¶ 15, 323 Mont. 295, 100 P.3d 137 (citations omitted). The affidavit does not address TU's argument as to the interpretation of the *Petrich Decree*. Instead, at most the affidavit supports water availability outside the time frame the District Court decreed in the *Petrich Decree*. The affidavit does not say when, if ever, such "late summer and fall" water was put to beneficial use, or under what authority on a previously adjudicated stream. Because TU is not barred from challenging any finding made in case 43B-402, which it did by filing its objection and motion based on the decree, neither the affidavit nor findings in case 43B-402 create an issue of material fact as to whether the District Court decreed a period of use in the *Petrich Decree*. Therefore, just as TU overcomes the prima facie status of the claim, TU also meets its burden to overcome the Water Court's interlocutory order in case 43B-402.

3. *Does application of Montana's repealed change statute create an issue of material fact?*

Melin argues that even if the District Court decreed a period of use, the water rights change statute in place prior to July 1, 1973 authorized an expansion to the period of use so long as no one objected. (Doc. 22.00 at 10). Prior to its repeal, this statute stated:

⁷ The document provided as Exhibit B to TU's motion contains a page out of order. The relevant pages are pdf pages 48 and 50).

The person entitled to the use of water may change the place of diversion, if others are not thereby injured, and may extend the ditch, flume, pipe, or aqueduct, but which the diversion is made, to any place other than where the first use was made, and may use the water for other purposes than that for which it was originally appropriated.

Section 89-803, RCM (1947), *repealed* Ch. 452, Laws of 1973.

The plain language of this statute limited pre-1973 changes to point of diversion, place of use, and purpose of use. Melin misconstrues the statute because it did not authorize water users to expand the period of use. Instead, water use outside the historical period of use was considered a new appropriation, with a priority date of the date of beneficial use. *See Quigley v. McIntosh*, 110 Mont. 495, 510, 103 P.2d 1067, 1074 (1939); *Twin Creeks Farm & Ranch, LLC v. Petrolia Irrigation Dist.*, 2022 MT 19, ¶ 33, 407 Mont. 278, 502 P.3d 1080 (new water use is a new appropriation, not a change in place or manner of use). The only case the Melins cite to support their argument is *Hansen v. Larsen*, 44 Mont. 350, 120 P. 229 (1911). *Hansen* involved a change in purpose of use from mining to agriculture. Purpose of use changes were expressly authorized by the old change statute. *Hansen* says nothing about changes to elements like period of use not mentioned in the statute, so the case offers Melin no support.

4. *Did DNRC change proceedings create an issue of material fact?*

Melin also suggests a period of use beyond July 1 was tacitly endorsed by the Department of Natural Resources and Conservation (“DNRC”) through approved change authorizations. (Doc. 22, at 11). There are several problems with this argument. DNRC does not address period of use in a change proceeding. Section 85-2-102(7), MCA (limiting changes to “change in the place of diversion, the place of use, the purpose of use, or the place of storage”). Even if it did, the factual authority Melin provides consists of 119 pages of preliminary decree abstracts for other water users on Mill Creek. (Doc. 22, Ex. C). Melin does not cite any analysis by DNRC of the historical use of claims 43B 194542-00 or 43B 194543-00 in the context of a change proceeding. More importantly, Melin also does not explain how DNRC analysis in a post-1973 change proceeding is admissible in a Water Court proceeding.

5. *Does the Petrich Decree injunction provision apply?*

The parties disagree on the impact of an injunction provision contained in the *Petrich Decree* stating the parties to the decree and their successors are

forever barred and perpetually restrained and enjoined from asserting any claim to, or any right, title or interest in or to, the rights to the use of the waters of the said stream elsewhere herein awarded and decreed, and from interfering in any way with the use and enjoyment by such parties and their successors in interest of the said rights as herein awarded and decreed.

(*Petrich Decree*, Conc. of Law ¶ V).

TU argues this provision bars the Melins and all the other parties to the decree from using any of the waters from Mill Creek inconsistent with the terms of the decree. (Doc. 21.00, at 21). The Melins respond that TU is not a water user on Mill Creek entitled to enforce the injunction provision, and even if it were, the clause is “essentially district court boilerplate.” (Doc. 22.00, at 13).

The injunction clause is not necessary to TU’s motion. The clause did not prohibit future new water uses outside the scope of the decree. The potential for such new uses actually was contemplated by the 1921 statute, albeit with a penalty provision making such new water use junior to any subsequent appropriator.⁸ Section 89-837, RCM (1947); *In re Gravely*, Case 76G-187, 1994 Mont. Water LEXIS 12, *5 (“the penalty imposed by 89-837 R.C.M. *** does not mean that an appropriator who fails to comply with the act has no water right claim at all”) (water master order denying summary judgment). But TU’s argument in its motion is not about new uses after the *Petrich Decree*; rather it focuses on what the District Court actually did decree.

Even though the injunction clause does not directly support TU’s argument, the Court mentions it because Melin argues in response that TU lacks standing to enforce the clause or “avail itself to the district court as it is not a party to *Allen* or *Petrich*.” (Doc. 22.00, at 13). To the extent Melin argues TU cannot raise an objection to interpretation of

⁸ Prior to its repeal in 1973, this provision stated in full:

Failure to comply with the provisions of this act deprives the appropriator of the right to use any water of such stream, or other source of supply, as against any subsequent appropriator mentioned in or bound by a decree of the court.

a district court decree when it is not a successor to a party to the decree, Melin is incorrect. Melin's predecessors put the interpretation of the *Petrich Decree* at issue when they filed the two claims as decreed rights. TU has proven the proper legal interpretation of the decree sets a period of use of May 1 to July 15. The Water Use Act does not bar TU or any other lawful objector from raising this challenge in a Water Court proceeding. *See Montana Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, 361 Mont. 77, 255 P.3d 179. Thus, while the injunction clause does not aid in interpretation of the decreed period of use, it likewise does not bar TU from relying on the legal interpretation of the *Petrich Decree* to overcome the prima facie status of the period of use elements of these two claims. Because the undisputed facts establish the scope of the period of use for these decreed rights is limited to May 1 to July 15, TU is entitled to summary judgment.

ORDER

Therefore, it is ORDERED that TU's motion for summary judgment is GRANTED. The period of use and period of diversion elements of claims 43B 194542-00 and 43B 194543-00 are modified to May 1 to July 15. Because the motion only addresses these two elements of these two claims, the Court issues this Order as one for partial summary judgment. M.R.Civ.P. 56(d). Additional proceedings may be necessary before this case may be closed. The Court will issue a separate order setting a conference to discuss the scope and schedule for additional proceedings.

ELECTRONICALLY SIGNED AND DATED BELOW.

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